

## REMARKS

Applicant respectfully requests further examination and reconsideration in view of the instant response. Claims 1-25 and 27-33 remain pending in the case. Claims 1-25 and 27-33 are rejected. Claims 1, 6, 9 and 25 have been amended. No new matter has been added.

### SRINIVASAN DATED AFTER

Applicant first points out that the patent publication no. 2004/0111725 by Srinivasan (also referred to herein as “Srinivasan” or “Srinivasan’s patent publication”) relied upon by the Office Action was filed November 7<sup>th</sup>, 2003, which is after the filing date July 10, 2003 of the instant application serial no. 10/616,883. The Srinivasan patent publication claims priority to a provisional application serial no. 60/426,962 filed November 8, 2002 (also referred to herein as “Srinivasan’s provisional”). To expedite prosecution of the instant application, Applicant has reviewed both Srinivasan’s patent publication and Srinivasan’s provisional. Applicant requests that future Office Actions cite portions of Srinivasan’s provisional instead of citing portions of Srinivasan’s patent publication since Srinivasan’s patent publication was filed after Applicant’s instant application. Applicant has been requesting that future Office Actions cite portions of Srinivasan’s provisional instead of citing portions of Srinivasan’s patent publication in every response made during prosecution of the instant application serial no. 10/616,883.

### 35 U.S.C. §112, first paragraph

In paragraph 3, the Office Action rejected Claims 1-25 and 27-33 under 35 U.S.C. 112, first paragraph.

The Office Action asserted that there is a lack of support in the specification for “A system comprising: a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer,” (emphasis added) as recited by

Claim 1 and “monitoring application data, without requiring information from a load balancer...,” as recited by independent Claim 28.

Applicants respectfully traverse. Applicants respectfully submit that no where does the specification state that any of the embodiments rely on or use information from a load balancer. For at least the reason that the specification does not state anywhere that any of the embodiments rely on or use information from a load balancer, the specification provides support for “A system comprising: a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer,” (emphasis added) as recited by Claim 1 and “monitoring application data, without requiring information from a load balancer...,” as recited by independent Claim 28. In addition, the specification does state that the controller 100 receives performance information for an application profile 112-116 from a plurality of client agents 120, 122, 124 where each client agent may run on an operating system instance on a resource and may monitor the performance of applications running on the operating system instance (0020). From 0020, it can be seen that the performance information is obtained from client agents that are running on resources’ operating instances. Therefore, Applicants respectfully submit that the specification does provide support for “A system comprising: a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer,” (emphasis added) as recited by Claim 1 and “monitoring application data, without requiring information from a load balancer...,” as recited by independent Claim 28. Claims 2-25 and 27 depend on independent Claim 1. Claims 29-33 depend on independent Claim 28. These dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

35 U.S.C. §112, second paragraph

In paragraph 5, the Office Action rejected Claims 1-25 under 35 U.S.C. 112, second paragraph.

The Office Action asserts that there is a lack of antecedent basis for “the instructions” in claim 25. Claim 25 has been amended to recite “wherein the instructions for the installing of the associated application further include instructions for configuring the associated application...” Therefore, Applicants believe that this rejection has been overcome.

The Office Action asserts that “each domain groups a subset of the resources” as recited in Claim 1 is not clear. Applicants respectfully disagree. Anyone of ordinary skill in the art would understand what “each domain groups a subset of the resource means.” However, in order to expedite prosecution of the instant application serial no. 10/616,883, Applicants have amended Claim 1 to recite “each domain includes a subset of the resources.” Therefore, Applicants believe that this rejection has been overcome.

The Office Action asserts it is unclear whether the domain data of Claim 6 is the same or different than the domain data in Claim 1. Claim 6 has been amended. Therefore, Applicants believe that this rejection has been addressed.

Based on the amendments and explanations provided herein, Applicants respectfully submit that the rejections of Claims 2-25 have been addressed.

35 U.S.C. §103(a)

Claims 1-23 and 27-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Application Publication No. 2004/0111725 by Srinivasan et al. (referred to hereinafter as “Srinivasan”) in view of United States Patent 6,823,382 by Stone, (hereinafter referred to as “Stone” ). Applicant has reviewed the cited art and respectfully submit that the embodiments of the present invention are neither taught nor rendered obvious by Srinivasan nor Stone, alone or in combination.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based

on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Applicant notes that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Applicant respectfully submits that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); In re Grasselli, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicant respectfully notes that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). Applicant respectfully submits that there is no motivation to combine the teachings of Srinivasan and Stone, because Srinivasan and Stone teach away from the suggested modification.

#### SRINIVASAN

This section describes Applicant’s understanding of what Srinivasan teaches. Referring to the abstract, Srinivasan teaches an application scheduler that receives at least one policy for managing applications over computer servers. The application scheduler also receives usage information indicating performance of the applications and the computer servers. Referring to 0010 lines 6-8, Srinivasan states, “The usage information may include processor usage, memory usage, a number of users and a number of connections to one of the applications,” (emphasis added). Referring to 0030, Srinivasan states that the information on the number of connections comes from the load balancer 260. Referring to 0029, Srinivasan states that the application

scheduler 240 uses the number of connections, via an application scaler 243 and scaling parameters that are monitored, to decide whether to run a new application instance or to put an application instance to sleep. Applicant respectfully submits that Srinivasan's deciding whether to execute or put to sleep is an example of Srinivasan's monitoring. Therefore, Srinivasan's monitoring of the number of connections to decide whether to start executing a new application instance or to put an application instance to sleep is a part of Srinivasan's monitoring applications. For at least these reasons, Applicant understands Srinivasan to teach that Srinivasan requires information, such as the number of connections, from Srinivasan's load balancer in order to monitor Srinivasan's applications as a part of managing Srinivasan's applications.

#### DIFFERENCE BETWEEN SRINIVASAN AND CLAIM 1

Applicant understands Srinivasan's number of connections to be a type of application data that is monitored since Srinivasan's application scheduler receives usage information, which includes a number of application connections that is obtained from a load balancer, indicating performance of the applications and the computer servers (abstract and lines 6-8 of 0010). For at least these reasons, Applicants understand Srinivasan to require information from Srinivasan's load balancer in order to monitor Srinivasan's applications as a part of managing Srinivasan's applications. For at least these reasons, Applicant understands Srinivasan to teach away from "a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer," (emphasis added) as recited by independent Claim 1.

The Office Action states that Srinivasan does not teach "domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications," as recited by Claim 1. Applicant respectfully agrees.

Applicant directs the reader to the Appeal Brief filed in response to the Office Action dated September 24, 2007 for reasons why Applicant believes that Srinivasan

does not teach “the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information,” as recited by Claim 1.

## STONE

This section describes Applicant’s understanding of what Stone teaches and Applicant’s understanding of the difference between what Stone teaches and the embodiment recited by Claim 1. Applicant understands Stone to teach managing resources for a multi-tiered application that is geared toward service-level management (title). Each tier of a multi-tiered application corresponds to one type of application (Figure 1 and Figure 2). For example, referring to Figure 1 tier 10 is for a firewall, tier 20 is for a web server, tier 30 is for an application and so on. Stone states at Col. 4 lines 13-14 that Figure 1 depicts “four levels or tiers of service components...” Stone states at Col. 4 lines 8, “The tiered model organizes these components into functional levels or tiers that correspond to the data flow for each service. Statistics collected and events monitored can thus be organized by service and tier, allowing an automated management server to diagnose problems and relate them to service-level objectives.” Stone states at Col. 6 lines 44-50,

Resources that are available for each tier are loaded into tier configuration 52... Tier configuration 52 includes a backup list and an alternate-server list that are used in the look-ahead process. Other nodes are not considered since they aren’t part of this tier’s service (emphasis added).

Therefore, Stone teaches allocating nodes associated with a particular tier’s backup list or alternate-server list to that same tier where a tier is for one type of application.

## DIFFERENCE BETWEEN STONE AND CLAIM 1

As stated herein, Applicant understands Stone to teach allocating nodes associated with a particular tier’s backup list or alternate-server list to that same tier where a tier is for one type of application. For this reason, Applicant understands Stone to teach away from “domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources

associated with a single domain are allocated for different types of applications,” (emphasis added) as recited by Claim 1.

#### OFFICE ACTION’S ASSERTIONS WITH REGARDS TO STONE

The Office Action asserts that Stone teaches “domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1 at Col. 7 lines 17-27. Stone states at Col. 7 lines 17-27,

Tier configuration 52 contains a list of servers for each tier, and a list of service components (software applications) for that tier. Thus tier configuration 52 associates service components with server machines or nodes on a tier basis. Each tier’s record contains a list of primary servers and backup servers that can be used when the primary servers fail or are insufficient to meet the SLO’s. The alternate servers can be used as additional backup servers, but are less efficient, slower, or otherwise provide a lower-quality of service.

Applicant understands Col. 7 lines 17-27 to teach that a list of servers can be associated with each tier. The servers associated with a tier can be primary servers and/or backup servers. However, Applicant does not understand Col. 7 lines 17-27 to teach, suggest, or render obvious “domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” (emphasis added) as recited by independent Claim 1. Further, as already discussed herein, Applicant understands Stone to teach allocating nodes associated with a particular tier’s backup list or alternate-server list to that same tier where a tier is for one type of application. Therefore, Applicant understands Stone to teach away from “domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1.

#### NO MOTIVATION TO COMBINE SRINIVASAN AND STONE

This section describes why Applicant believes that Srinivasan and Stone cannot be combined because they teach away from the embodiment recited by independent

Claim 1. Since Srinivasan teaches away from “a processor for executing instructions of a monitoring agent to monitor application data for compliance with policy data, wherein the system is not required to obtain information from a load balancer,” (emphasis added) as recited by independent Claim 1, there is no motivation to combine Srinivasan with another piece of art to suggest the embodiment recited by Claim 1. Further, Stone teaches away from “domain definition data including information on a plurality of domains where each domain includes a subset of the resources, wherein resources associated with a single domain are allocated for different types of applications,” as recited by Claim 1, therefore, there is no motivation to combine Stone with another piece of art to suggest the embodiment recited by Claim 1. Therefore, neither Srinivasan nor Stone can be combined with another piece of art to suggest the embodiment recited by Claim 1.

#### SUMMARY

For at least these reasons, Applicant believes that independent Claim 1 should be patentable. For similar reasons, independent Claim 28 should also be patentable in that independent Claim 28 recites “monitoring application data, without requiring information from a load balancer, for compliance with one or more performance policies, the application data including one or more application profiles, each application profile having a performance profile and a resource profile, the resource profile including resource utilization information associated with an application, each application executing in a container associated with a domain, each domain including a subset of resources, the resources including a plurality of computers, wherein resources associated with a single domain are allocated for different types of applications...”

Claims 2-27 depend on independent Claim 1. Claims 29-33 depend on independent Claim 28. These dependent claims include all of the features of their respective independent claims. Further these dependent claims include additional features which further make them patentable. Therefore, these dependent claims should be patentable for at least the reasons that the respective independent claims should be patentable.



### CONCLUSION

Based on the arguments presented above, Applicant respectfully asserts that Claims 1-25 and 27-33 overcome the rejections of record and, therefore, Applicant respectfully solicits allowance of these Claims.

The Examiner is invited to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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Dated: 03/06/2009

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